

INFORMATION ON SB 858



To: Members of the House Criminal Justice Committee
From: Debi Cain, Executive Director, MDSVPTB
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One study has estimated that 25,000 pregnancies occur annually following the sexual assault of adult women.¹ When sexual assault results in conception of a child, some perpetrators have manipulated their claims to parental rights as a means to punish, coerce, harass, or intimidate their victims, for example:

- A Massachusetts man convicted of criminal sexual conduct against a 14 year old girl demanded visitation with his daughter after a court ordered him to pay child support, offering to drop this demand if he no longer had to pay child support.²
- A North Carolina legislator sponsored legislation terminating the parental rights of rape perpetrators after hearing from three women whose assailants said they would agree to termination of their parental rights in exchange for the women's agreement not to press charges or testify in court.³

The Michigan Domestic & Sexual Violence Prevention & Treatment Board supports SB 858, which creates a needed mechanism for sexual assault victims to protect themselves and the children conceived as a result of an assault from harm at the hands of assailants. Additionally, enactment of this bill by **May 26, 2016** will qualify the State of Michigan for approximately \$414,000 in added funding for sexual assault victim services under the federal "Rape Survivor Child Custody Act." MDSVPTB staff have prepared this memorandum on behalf of the Board to respond to anticipated questions about this bill.

1. What does the Rape Survivor Child Custody Act require? Does SB 858 meet these requirements?

Under the federal Rape Survivor Child Custody Act, Michigan may receive increased dollars under two of its current formula grant awards (STOP and Sexual Assault Services Program) if it "has in place a law that allows the mother of any child that was conceived through rape to seek court-ordered termination of the parental rights of her rapist with regard to that child, which the court is authorized to grant upon clear and convincing evidence of rape." "Termination" means "a complete and final termination of the parent's right to custody of, guardianship of, visitation with, access to, and inheritance from a child." 42 USC 14043h, 14043h-2.

MDSVPTB staff have consulted regarding SB 858 with staff at the federal Office on Violence Against Women (OVW), which administers the STOP and Sexual Assault Services Program formula grants that Michigan currently receives. MDSVPTB staff shared the text of SB 858 as introduced, as well as amendments to the introduced bill that were requested by MDSVPTB members and representatives from

¹ Steward & Trussell, *Prevention of Pregnancy Resulting from Rape: A Neglected Preventive Health Measure*, 19 Am. J. Preventive Med. 228 (2000). The authors further report that the number of pregnancies resulting from sexual assault may be higher than indicated in these studies, because they do not account for the approximately 30% of sexual assaults in which the victim is under age 18. The pregnancy rate among minor victims may be higher than the rate in the adult victim population, because adult women are more likely to be using hormonal contraception or be sterilized.

² *Rape and Child Custody: A question of proof*, The Economist, July 19, 2014, p. 27.

³ Sheehan, *Rapists Lose Facet of Power*, News & Observer (Raleigh, N.C.), Sept. 6, 2004, at B1. See also N.C. Gen. Stat. secs. 14-27.2 – 14.27.3.

other Michigan stakeholders. OVW staff expressed their opinion that the shared text and amendments were consistent with the requirements in the Rape Survivor Child Custody Act.

2. How much additional federal funding may be awarded? How would it be used?

MDSVPTB staff calculate that Michigan could receive an increase of about \$414,151 in its current grant funding if SB 858 is enacted into law. 25% of the increase would be applied to current STOP grant funding that is used to support training for law enforcement officers responding to domestic and sexual violence crimes (\$103,538). 75% would apply to Sexual Assault Services Program funding that supports sexual assault advocacy and counseling services (\$310,613). Increases would be applied for a 2-year period. Michigan will have four opportunities to apply for these funding increases. States will qualify for first round of funding increases if they submit evidence that their laws are in compliance with the federal Rape Survivor Child Custody Act by May 26, 2016. See 42 USC 14043h-4, 14043h-5 and 14043h-6.

3. The Governor has just signed Public Act 96, which broadens current restrictions on courts' authority to award perpetrators of sexual assault custody of or parenting time with children conceived as a result of the assault. Is SB 858 still needed?

SB 858 is needed to fill gaps in the protections offered by Public Act 96. Prior to the enactment of Public Act 96, the Child Custody Act prohibited courts from granting child custody or parenting time to rape perpetrators who were convicted of an assault that resulted in the conception of the child. Public Act 96 expands this protection to prohibit such awards where a biological parent has not been convicted of an assault, but has been shown to have perpetrated it by clear and convincing evidence. While Public Act 96 provides an important enhancement to the protections offered victims and children in custody and parenting time cases, it only addresses rights of access to a child without providing for termination of parental rights. The Act's sole focus on rights of access to children gives leaves gaps in protection and gives rise to uncertainties about its interplay with other laws that govern parental rights and responsibilities, for example:

- The Act would not foreclose a sexual assault perpetrator from inheriting from the child he conceives if that child predeceased him without a will.
- The Act does not terminate a sexual assault perpetrator's interest in the adoption of the child.
- The Act's provision for maintaining an offender's duty to pay child support is flexible enough to allow a survivor to choose whether or not to accept support from the offender, as long as she is not receiving public assistance. However, the interplay of this provision with the laws governing child support for individuals applying for or receiving public assistance is not clear.

Additionally, Public Act 96 does not clearly allow a sexual assault victim to take the initiative to protect herself and the child from contact with assault perpetrator. The Act specifies that a victim parent may assert its protections as "an affirmative defense...in [response to] a proceeding brought by the offending parent," but it is silent as to whether a victim parent may initiate a court proceeding to declare that a perpetrator parent has no right to custody or parenting time.

Passage of SB 858 will resolve the foregoing gaps and uncertainties by giving sexual assault victims a mechanism by which they can take the initiative to completely terminate a rapist's parental rights.

4. Is SB 858 consistent with constitutional due process requirements?

Yes. The United States Supreme Court has established that the clear and convincing standard of evidence incorporated into SB 858 satisfies due process in a case to terminate or restrict parental rights. *Santosky v. Kramer*, 455 U.S. 745 (1982).